Contingency Contracting

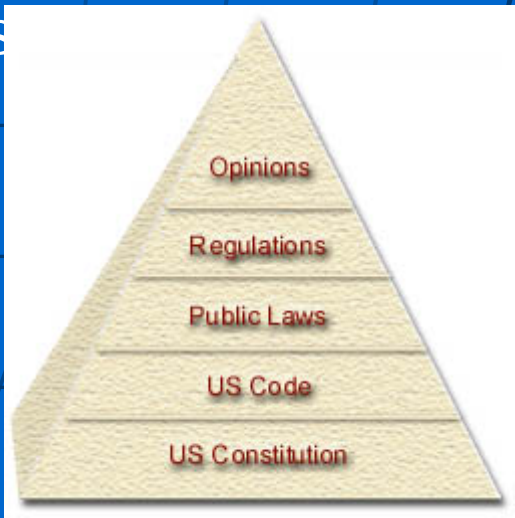
Funding of Contingency Operations

Lesson Objectives

- Describe the various legislative controls imposed with the use of appropriated funds.
- Demonstrate familiarity with the terminology associated with fiscal law.
- Demonstrate understanding of a funding citation.
- Describe various O&M, MILCON, and related sub-appropriations used in a contingency.

Fiscal Law

- *"No money shall be drawn from the Treasury, but in consequence of appropriations made by law."*
- According to the Constitution, only Congress has the ability to provide funds to be spent by the Executive Branch (includes DoD)
- Appropriations and Authorizations Acts
- Establishes Legislative Controls



Appropriations & Authorizations

- Authorizations – establishes programs and indicates the purpose Congress intends for appropriated money, and often contains restrictions on how the money may be spent
- Appropriations – makes money available for various purposes as indicated by Congress
- Authorization = program
- Appropriation = money on that progra

Transfer & Reprogramming

- Often required to ensure funds are the right type and amount for expenditure
- Reprogramming is the movement within an appropriation
- Transfer is movement from one appropriation to another
- Reprogramming is authorized, transfer is not - unless you have separate statutory authority… above the CCO level!

Commitments

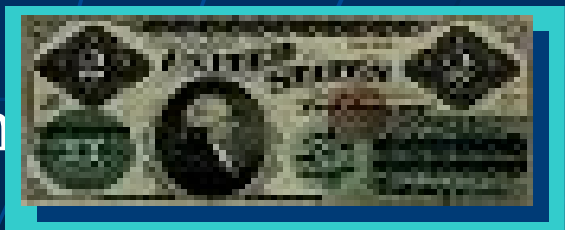
- Administrative reservation of funds for a particular purpose (fenced off) signed by a Certifying Official
- Provides the correct Funding Citation

- Those eligible to be appointed Certifying Officials include:
  commanders
  deputy commanders
  resource managers
  fund holders
  travel authorizing officials
  purchase card approving officials

- DFAS-DE-7000.5-R: Contracting Officers and Legal Advisors cannot be appointed Certifying Officials

Obligations

- Quid pro Quo…a promise of money for promise of delivery
- Legally binding action that creates a liability for the government
- Occurs when a contract action containing funds is signed
- The time of award!
- Signed by a "Warranted" Contractin



Disbursements

- Payments made by Finance or Paying Agent usually in cash
- Paying Agents are appointed in writing by a Commander or Finance Officer
- CCO's may be appointed as Paying Agents!!!
- Considerations:
  - Mission requirements
  - Replenishment of funds
  - Capability to safeguard
  - Exchange rate if paying in foreign currency
  - Record keeping responsibilities

Legislative Controls

- There are three limitations on the expenditure of f
- #1 - Color
- #2 - Year
- #3 - Amount

- An agency may obligate and expend appropriations only of a proper purpose (color), within time limits applicable to the appropriation, and within amounts established by Congress

#1-Color of Money (Purpose)

- 31 USC 1301 (a), prohibits spending money on objects other than those for which appropriations were made

- Necessary Expense Rule, a three-pronged test:
  - Logically related to the appropriation's general purpose
  - Not prohibited by law
  - Not otherwise provided for by another appropriation

- For example:
  - Operations & Maintenance (O&M) – used for the day-to-day expenses such as training exercises, deployments, civilian salaries, and operating and maintaining installations
  - Most common type of fund spent during a contingency operation

#2-Time

- 31 USC 102 (a), appropriations are available to support "bona fide" needs during the period of availability
- Obligations must occur within the period of availability for contracts
- For Example:
  - O&M has a period of availability of 1 fiscal year (1 Oct -30 Sep) since it is an annual appropriation
  - Multiyear Appropriations include: RDT&E – 2 years, Construction – 5 years, Procurement – 3 years

#2-Time: Bona Fide Need

- General Rule: Need must exist at the time of award and contract must be completed within the period of availability
- Bona Fide Need for Supplies:
  - Considered proper if needed to support an operation in a given FY, and ordered and used in the same FY
  - Supplies ordered in one FY an activity will not use until the next FY is considered improper unless:
    - Stock Level Exception: Replenishment of stock levels, safety levels, mobilization requirements, and authorized backup stocks. Excess of normal usage even for a price break is not authorized!
    - Lead Time Exception: If goods/materials will not be obtainable at the time needed because of the time to order, produce, fabricate, and deliver them requires they be

#2-Time: Bona Fide Need Cont'd

- Bona Fide Need for Services:
  - Current funds are used to obtain current services, but may not use current funds to obtain future services
  - Services generally don't cross FY's unless:
    - Non-severable: By their nature cannot be divided for performance into separate FY's.
    - Statutory: Permits the use of current year funds to acquire services that continue over the end of an FY, even if the services are severable, provided the duration is no longer than 12 months
      - For Example: Utilities, Trash Disposal, etc.

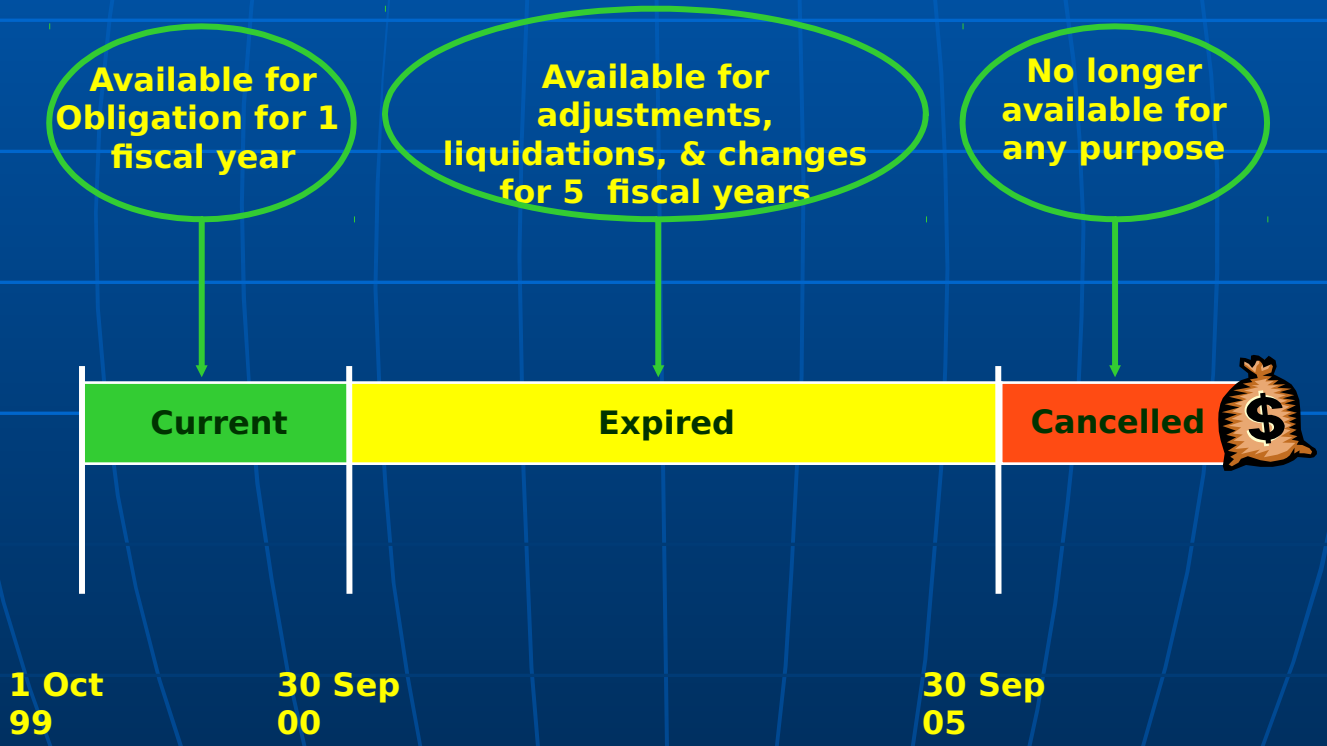
#2-Time: Lifecycle of Funds

- Current: money whose availability for new obligations has not yet expired under the terms for that appropriation, i.e.: O&M is 1 year

- Expired: money whose availability has expired for new obligations, but are available to make adjustments and liquidate previous obligations

- Cancelled: money that is no longer available for any purpose

#2-Time: Lifecycle of O&M Funds



#3-Amount

- May not spend more than is available (Certified by Comptroller)
- May not exceed regulatory limitations for the purpose
- For Example:
  - O&M funds may be used for the purchase of "end items" up to $100k. Beyond the $100k use Procurement Funds
  - O&M funds may be used for construction up to $750k
  - Construction to correct life, health, or safety threatening deficiencies may use O&M up to $1.5m

#3-Amount: Future Year Funds

- In cases where future year appropriations are required, contracts must contain a provision that specifically states the contract is conditioned upon the avai
  - FAR 52.232-18
  - FAR 52.232-19

- 41 USC 11, Feed & Forage A

#3-Amount: Augmentation

- An action by an agency that increases the effective amount of funds available in an agency's appropriation
- Generally results in expending funds in excess of the amount Congress originally appropriated
- Generally prohibited, but Congress can enact special interagency transactio authorities
- Not a CCO responsibility!

Violations of Fiscal Law

- 31 USC 1341(a), Anti-Deficiency Act:
  - Prohibits obligations in excess of funds available
  - Prohibits obligations in excess of amounts permitted by regulation
  - Prohibits obligations in adv appropriation

- A knowing or willful violation is punisha by a fine of $5000, 2 years in prison, or bo

- All violations are required to be investig and reported to Congress

Funding Citations

- Position #:

  1-2 3-4 5 6-9

- ACRN + Agency + FY + Appropriation

- For Example:
- AA2132020…

Funding Citations

- ACRN (#1-2):
  - Alphabetic and serve as a reference identifier to the line of accounting
  - A second line of accounting begins AB
- Agency (#3-4):
  - 17 Dept of the Navy (includes USMC)
  - 21 Dept of the Army
  - 57 Dept of the Air Force
  - 97 Dept of Defense

Appropriation (#6-9)

	ARMY	NAVY/MC	AIR FORCE	OSD
Military Personnel	2010	1453/1105	3500	N/A
Reserve Personnel	2070	1405/1108	3700	N/A
National Guard Personnel	2060	N/A	N/A	N/A
O&M	2020	1804/1106	3400	0100
O&M, Reserve	2080	1806/1107	3740	N/A
O&M, National Guard	2065	N/A	N/A	N/A
O&M, Family Housing	7025	7035	7045	N/A
Procurement (Aircraft)	2031	1506	3010	N/A
Procurement (Missiles)	2032	N/A	3020	N/A
Procurement (Weapons & Tracked Vehicles)	2033	1507	N/A	N/A
Procurement (Ammunition)	2034	N/A	N/A	N/A
Shipbuilding & Conversion	N/A	1611	N/A	N/A
Other Procurement	2035	1810/1109	3080	0300
Research, Development, Test & Evaluation (RDT&E)	2040	1319	3600	0400
Military Construction	2050	1205	3300	
Family Housing Construction	7020	7030	7040	
Stock Fund		*4930	4911	4921

*(Also known as Navy Work Capital Fund)

Other Funding Procedures

- Typical problem areas in determining Necessary Expense:
- Vehicle Rentals for recreational activities
- Recreational Supplies
- Entertainment
- Awards, Gifts, Coins
- Clothing
- Medical Supplies and Services
- Meals & Food (fresh fruit, vegetables, and bread)
- Legal Claims payable to host government, foreign companies, citizens, and other US Agencies and Companies
- Fuels, Oil, Grease, Gases, etc.

Recording Obligations

- Dependent upon contract type:
  - FFP contracts are fully funded (except for DFARS 232.703-1)
  - FFP w/EPA, FFIP, CPFF,CPIF,CPAF, IDIQ, REQ, & Letter
- Contracts conditioned upon availability of funds (FAR 32.703-2)
  - use contract clause 52.232-18 for:
    - operation and maintenance
    - continuing services (e.g., rentals and utilities)
  - use contract clause 52.232-19 for:
    - indefinite-quantity or requirements contracts
- Options funded when exercised
- Subscriptions may cross over fiscal years (use contract

Economy Act Order

- Contract Offloading: Process whereby an agency requests supplies or services from another agency
- Orders issued on DD Form 448, Military Interdepartmental Purchase Request (MIPR)
- Each order must be supported by a Determination and Finding (D&F) demonstrating it is in the best interest of the government
- Comptroller functionally responsible (must coordinate with this activity)

O&M Sub-Appropriations

- Emergency and Extraordinary Expenses
  - funds to pay for any emergency or extraordinary expense which cannot be anticipated or classified
- Official Representation Funds
  - used to maintain the standing and prestige of the US by extending courtesies to guests of the DoD
- CINC Initiative Funds
  - fund contingencies, selected operations, special training, humanitarian assistance, and civic assistance
- Humanitarian and Civic Assistance
  - set aside by Congress and may not use general O&M funds for same purpose

MILCON

- Obligation availability of 5 years
- Unspecified Minor Construction
  - $750K to $1.5M per project
    - except JCS-controlled exercises overseas (must use UMC for all projects, even below $500K, unless “truly temporary”)
- Specified Military Construction
  - projects exceeding $1.5M
  - requires Congressional approval

Emergency Construction

- Not actually an appropriation, but uses unobligated MILCON funds when enacted
- Three statutes for enacting ECA:
  - 10 USC 2808, Declaration of War and National Emergency
  - 10 USC 2803, Emergency Construction
  - 10 USC 2804, Contingency Construction

Other Related Appropriations

- Foreign Assistance Act (FAA), 22 USC 2151-2430
- Defense Emergency Response Fund (DERF), DoD Directive 3025.1
- Stafford Disaster Relief and Emergency Assistance A

Foreign Funds

- Section 607 of Foreign Assistance Act
  - Authorizes US government to furnish commodities and services to friendly foreign countries, includes peacekeeping and disaster relief efforts on a reimbursable basis
- UN Section 7 of United Nations Participation Act (UNPA)
  - Authorizes US to furnish services, facilities, or other assistance when requested by the United Nations on a reimbursable basis, unless waived by the SECSTATE (after consulting with SECDEF)
- Acquisition and Cross Servicing Agreement, NATO Mutual Support Act (Public Law 96-323)
  - Provides DoD with simplified authority to

Humanitarian Assistance

- Provision of personnel, equipment, and supplies to promote human welfare, reduce pain and suffering, and prevent loss of life or destruction of property from the aftermath of natural or man-made disasters
- Different but similar to Contingencies!!!
- Two types of HA
  - HCA (Humanitarian and Civic Assistance)
  - FDR (Foreign Disaster Recovery)

HCA: Constraints

- SECSTATE Approval
- Conducted in conjunction with JCS authorized military operations and exercises
- Funded from HCA-Earmarked funds or CINC Initiative Funds
- Must promote the security interests and operational readiness skills of the participants
- Must complement (not duplicate) other social or economic foreign assistance provided separately
- Not provided to foreign military organizations
- Confined to five categories:
  - Medical, dental, and veterinary care
  - Construction of rudimentary surface transportation systems
  - Well-drilling and construction of basic sanitation facilities
  - Rudimentary construction and repair of public facilities
  - Detecting and Clearing Land Mines

Summary/Review

- Matching the right funds to various requirements or needs
- Understanding the limitations (purposes) of O&M, HCA, and other funds enables the contracting officer to get the right “color of money”
- Being familiar with fiscal law helps to ensure legal and proper obligation of funds; prevents abuses and Anti-Deficiency violations